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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	M. DEPUTY

1 Beatrice Miranda
2 Coconino County Detention Facility
3 951 E. Sawmill Rd.
4 Flagstaff, AZ 86001

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Beatrice Miranda,

Petitioner,

v.

Tracy Nielsen, Interim Chief, Pascua
Yaqui Tribe Department of Public
Safety,

Kurt Braatz, Commander, Detention,
Coconino County Detention Facility,
and

Vincent Anchando, Assistant
Correctional Program Specialist,
Bureau of Indian Affairs
Office of Justice Services - Division of
Corrections,

Respondents.

CV-09-8065-PCT-PGR-ECV

**REQUEST FOR
APPOINTMENT OF COUNSEL
PURSUANT TO 18 U.S.C. § 3006A**

Petitioner Beatrice Miranda is an enrolled member of the Pascua Yaqui Tribe ("the Tribe"). Ms. Miranda is currently serving a sentence totaling 910 days in custody imposed by the Pascua Yaqui Tribal Court. Because she is being held in custody in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302(7), Ms. Miranda is filing herewith a Petition for Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303 and 28 U.S.C. § 2241. As the Financial Affidavit attached hereto as Exhibit A shows, Ms. Miranda cannot afford to hire private counsel to represent her in connection with the Petition. Ms. Miranda respectfully requests that this Court appoint the Office of the Federal Public Defender for the District of Arizona to represent her in connection with the Petition pursuant to the Criminal Justice

1 Act, 18 U.S.C. § 3006A (the “CJA”) and the CJA Plan for the District of Arizona.
2 The Declaration of Assistant Federal Public Defender Daniel L. Kaplan attached
3 hereto as Exhibit B demonstrates that Mr. Kaplan has familiarized himself with the
4 pertinent facts and legal issues and stands ready to represent Ms. Miranda in
5 connection with the Petition.
6

7 Ms. Miranda notes that Mr. Kaplan assisted her in the preparation of this
8 Request, as well as the Petition for Writ of Habeas Corpus filed herewith, and that
9 these documents do not reflect upon her ability to represent herself effectively.

10 Argument

11 The “Interests of Justice” Require that CJA Counsel be Appointed 12 to Assist Ms. Miranda with Her Petition for Writ of Habeas Corpus.

13 A. Ms. Miranda is Eligible for Appointed Counsel Under the 14 CJA, the CJA Plan for the District of Arizona, and Applicable Caselaw.

15 18 U.S.C. § 3006A(a)(2)(B) specifies that a United States Magistrate Judge
16 may appoint government-supplied counsel to represent a financially eligible
17 individual seeking relief under 28 U.S.C. § 2241 upon the judge’s determination
18 that “the interests of justice so require.” The CJA Plan for the District of Arizona
19 in turn provides that “[r]epresentation must be provided for all eligible persons
20 under . . . 18 U.S.C. § 3006A.” CJA Plan for the District of Arizona Part IV.A.1
21 (*adopted by* General Order 07-08). In deciding whether to appoint counsel in a
22 habeas proceeding, the Court generally should “evaluate the likelihood of success
23 on the merits as well as the ability of the petitioner to articulate his claims pro se
24 in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718
25 F.2d 952, 954 (9th Cir. 1983).
26
27

28 In the instant case, the requisites for the appointment of CJA counsel are
present. Ms. Miranda is “financially eligible,” as shown by the Financial Affidavit

1 attached hereto as Exhibit A. Ms. Miranda is seeking relief under 28 U.S.C.
2 § 2241, as the Petition for Writ of Habeas Corpus filed herewith demonstrates.
3 Section 2241 is applicable, because Ms. Miranda is “in custody in violation of the
4 Constitution or laws or treaties of the United States” (*id.* § 2241(c)(3)) –
5 specifically, she is in custody in violation of the Indian Civil Rights Act, 25 U.S.C.
6 § 1302(7). Ms. Miranda’s right to pursue habeas corpus relief is further confirmed
7 by 25 U.S.C. § 1303, which provides that “[t]he privilege of the writ of habeas
8 corpus shall be available to any person, in a court of the United States, to test the
9 legality of his detention by order of an Indian tribe.” Finally, the “interests of
10 justice” require that counsel be appointed, because Ms. Miranda’s claim is likely
11 to succeed on the merits – provided that she has the assistance of counsel.
12

13 **B. Ms. Miranda’s Claim is Likely to Succeed Because Her**
14 **Two-and-a-Half Year Sentence Far Exceeds the Indian**
15 **Civil Rights Act’s One-Year Cap.**

16 The claim raised in Ms. Miranda’s Petition for Writ of Habeas Corpus is
17 substantial and likely to succeed. Ms. Miranda hereby incorporates her Petition by
18 this reference, and provides the following summary of the factual and legal basis
19 for the claim raised in the Petition.

20 The portion of the Indian Civil Rights Act codified at 25 U.S.C. § 1302(7)
21 prohibits any Indian tribe exercising powers of self-government from “impos[ing]
22 for conviction of any one offense any penalty or punishment greater than
23 imprisonment for a term of one year.” In a recent case, the United States District
24 Court for the District of Minnesota held that this language bars Indian tribes from
25 sentencing individuals to more than one year of imprisonment in connection with
26 any “single criminal transaction.” *Spears v. Red Lake Band of Chippewa Indians*,
27 363 F. Supp. 2d 1176 (D. Minn. 2005). After thoroughly surveying the history
28 and purpose of the Indian Civil Rights Act, the court concluded that Congress’s

1 intention was to create a “balanced and logical regime” whereby “Indians accused
2 of minor crimes faced minor penalties in tribal court where some constitutional
3 rights were withheld,” whereas “Indians accused of serious crimes faced serious
4 penalties in federal court where all constitutional rights were available.” *Id.* at
5 1180. If a contrary interpretation were adopted, the court stressed, “tribal court
6 defendants would be routinely exposed to serious sentences for minor crimes
7 without guaranteeing them all their basic constitutional rights.” *Id.*

9 Ms. Miranda’s prosecution and sentencing powerfully demonstrate the truth
10 of the *Spears* court’s observation. Ms. Miranda is serving a sentence of two and a
11 half years in connection a “single criminal transaction” involving an encounter
12 between her and two female tribe members on the Pascua Yaqui reservation.
13 Although the Tribe charged her with eight separate criminal counts, the narrative
14 accompanying each count identified the time of the offense as “approximately
15 10:56 p.m.” on January 25, 2009, and identified the place of each offense as a one-
16 or two-block area of the Pascua Yaqui reservation. All of the charges related to a
17 brief encounter in which no one was hurt, but Ms. Miranda allegedly yelled
18 profanities at two female tribe members and menaced them with a knife. Neither
19 the Indian Civil Rights Act nor the constitution and laws of the Pascua Yaqui
20 Tribe guaranteed Ms. Miranda government-supplied counsel, and she was
21 unrepresented through her trial and sentencing. Through the trial and sentencing,
22 Ms. Miranda made no objections, presented no evidence or argument, and raised
23 no defenses. As the *Spears* court observed, Congress intended for the Indian Civil
24 Rights Act to provide persons charged in tribal court with meaningful protections
25 paralleling those provided in the Bill of Rights, and it was never Congress’s
26 intention that individuals would be sentenced to as much as two and a half years
27 after having been tried and convicted without counsel.
28

1 Finally, Ms. Miranda is not able to effectively represent herself. Ms.
2 Miranda has only a high-school education, and no legal training. This document
3 was prepared with the assistance of Assistant Federal Public Defender Daniel L.
4 Kaplan, whose Declaration is attached hereto as Exhibit B, and does not reflect
5 upon Ms. Miranda's ability to represent herself effectively. Instead, Ms.
6 Miranda's ability to represent herself effectively is illustrated by her self-
7 representation in her trial and sentencing in the tribal court, in the course of which
8 she filed no pleadings, made no arguments, examined no witnesses, and raised no
9 defenses. Moreover, the issue raised in her Petition is complex, involving a
10 difficult question regarding the interpretation of ambiguous language in a federal
11 statute and the examination of the statute's history and purposes. The issue is also
12 important, broadly implicating the sentencing power of Indian tribal governments
13 across the country. Because the existing caselaw on the issue is quite limited, this
14 Court's decision will play a crucial role in the development of this important legal
15 issue, and will likely be of assistance to the Ninth Circuit and perhaps the Supreme
16 Court in future appeals. A thorough development of the arguments relating to this
17 important issue through adversary presentations by trained counsel will assist the
18 Court in reaching an informed decision.

21 Conclusion

22 In summary, the claim raised in Ms. Miranda's Petition for Writ of Habeas
23 Corpus is important, complex, and likely to succeed on the merits, but only with
24 the application of legal skills that Ms. Miranda does not possess. For these
25 reasons, and pursuant to the CJA, the CJA Plan for the District of Arizona, and
26 applicable caselaw, Ms. Miranda respectfully requests that the Court appoint the
27
28

1 Office of the Federal Public Defender for the District of Arizona to represent her
2 in connection with her Petition for Writ of Habeas Corpus.

3
4 Respectfully submitted on: _____
5

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7 *Beatrice Miranda* 4/16/09
8 BEATRICE MIRANDA
9 Coconino County Detention Facility
10 951 E. Sawmill Rd.
11 Flagstaff, AZ 86001
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FINANCIAL AFFIDAVIT

IN SUPPORT OF REQUEST FOR ATTORNEY FEES AND FOR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF

_____ V.S. _____

FOR

AT

LOCATION NUMBER

PERSON REPRESENTED (Show your full name)

- 1 ☐ Defendant—Adult
- 2 ☐ Defendant - Juvenile
- 3 ☐ Appellant
- 4 ☐ Probation Violator
- 5 ☐ Parole Violator
- 6 ☐ Habeas Petitioner
- 7 ☐ 2255 Petitioner
- 8 ☐ Material Witness
- 9 ☐ Other

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

CHARGE/OFFENSE (describe if applicable & check box →)

- ☐ Felony
☐ Misdemeanor

EMPLOYMENT

Are you now employed? ☐ Yes ☒ No ☐ Am Self-Employed

Name and address of employer: _____

IF YES, how much do you
earn per month? \$ _____

IF NO, give month and year of last employment

How much did you earn per month? \$ _____

If married is your Spouse employed? ☐ Yes ☒ No N/A

IF YES, how much does your
Spouse earn per month? \$ _____

If a minor under age 21, what is your Parents or
Guardian's approximate monthly income? \$ _____

ASSETS

OTHER INCOME

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☐ Yes ☒ No

IF YES, GIVE THE AMOUNT
RECEIVED & IDENTIFY
THE SOURCES

RECEIVED

SOURCES

CASH

Have you any cash on hand or money in savings or checking accounts? ☐ Yes ☒ No IF YES, state total amount \$ _____

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☒ No

IF YES, GIVE THE VALUE AND \$
DESCRIBE IT

VALUE

DESCRIPTION

MARITAL STATUS

- ☒ SINGLE
☐ MARRIED
☐ WIDOWED
☐ SEPARATED OR
☐ DIVORCED

Total
No. of
Dependents

3

List persons you actually support and your relationship to them

Nikki Miranda mother
Daisy Miranda mother
Jeremy Miranda mother

DEPENDENTS

OBLIGATIONS & DEBTS

DEBTS & MONTHLY BILLS

(LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)

APARTMENT
OR HOME:

Creditors

Total Debt

Monthly Paymt.

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

4/2/09

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)

Beatrice Miranda